

REMARKS

Claims 20, 21, 23-27, 29-36, and 39-43 are pending. Claims 20, 21, 23-27, 29-36, 39, 40, 42, and 43 are constructively withdrawn by Examiner, subject to a new restriction requirement. Claim 41 is rejected under 35 USC 103(a) as being unpatentable over US Pub. 2001/0043608 (Potter, et al.) in view of US Pub. 2001/0002927 (Detampel et al.) and US 6,819,665 (Pinard, et al.). No amendments are made herein. Claims 20, 21, 23-27, 29-36, and 39-43 are presented for examination in view of the arguments below.

Corrected Restriction Requirement Requested

Examiner holds that invention group I consists of claims 20, 21, 23-27, 29-36, 39, 40, 42, and 43 in class 370, while group II consists of claim 41 in class 718. Examiner withdrew group I from consideration. However, the present rejection under 35 USC 103 is based on class 370, since Potter and Pinard are both in class 370. Also, the present application is published in class 370. It is clear that the Examiner inadvertently elected the wrong group for examination, and thus examined only claim 41 by mistake.

In paragraph 8 of the pending Office Communication, Examiner states that new claim 41 replaced previous claim 19. This is incorrect. New claim 39 replaced claim 19, as stated in Applicants' remarks of 03-26-2008. This replacement is clear from the claims as amended; firstly because the preamble of claim 39 is the same as that of claim 19 ("A data communications system"), but is different from that of claim 41 ("A computer"); and secondly because the dependent claims of claim 19 were redirected to depend from claim 39. Claim 41 replaced claim 37, not claim 19, as is stated in Applicants' remarks of 03-26-2008.

Examiner further states in paragraph 8 that claims 20, 21, 23-27, 29-36 have been examined. He makes this statement to support his conclusion that these claims were among those originally presented for prosecution on the merits. However, he then withdraws these claims because they were not originally presented for prosecution on the merits. This is a logical contradiction.

In view of the above clear mistakes, Applicants request a corrected restriction requirement and a new office action. Furthermore, the restriction requirement was not necessitated by Applicants' amendment of 03-26-2008. The subject matter and preambles of the claims did not change from the respective previous claims. Therefore, if a corrected restriction is to be made, Applicants should have the opportunity to explicitly elect and transverse the requirement.

Election and Traversal of Restriction Requirement

The above factors of the restriction requirement indicate that that Examiner intended to constructively elect group I instead of group II. In any case, Applicants elect group I for examination, consisting of claims 20, 21, 23-27, 29-36, 39, 40, 42, and 43.

Claim 41 has now been examined, so there can be no reason to withdraw it in a corrected restriction requirement. Furthermore, claim 41 defines group II, but it was examined in class 370, which defines group I. This argues against a different classification and field of search for groups I and II, and argues against a serious burden in examining all of the claims.

Both claims 39 and 41 recite a load-balancing element. In claim 39: "a resource control device in the PBX that selects one of the telephone and/or data processing devices to execute a teleconference based on a telecommunications load and a gateway resource availability". Accordingly, Examiner must search and consider load-balancing art in order to determine the contribution of the load-balancing element to patentability of either group I or group II. Thus, it cannot be a serious burden to perform such a search and consideration for either group.

MPEP 803, second paragraph: "If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions."

For the above reasons, Applicants respectfully request withdrawal of the restriction requirement, and examination of all claims on the merits.

Response to Rejections under 35 USC 103

On page 3, paragraph 3 of the office action, Examiner states that new claim 41 replaced previous claim 19. This is incorrect. New claim 41 replaced previous claim 37. This is clearly stated twice in Applicants' remarks of 03-26-2008. New claim 41 did not add a new limitation "a computer". This limitation was recited in the previous claim 37 and also in the previous claims 20-22. Due to these mistakes, Applicants request withdrawal of finality, and provision of a corrected examination.

On page 10 last paragraph of the office action, Examiner asserts correspondence between Applicants' "telephone and video conference data processing devices" (22a-22b of FIG 2) and Potter's terminals 44-46. However, Potter's terminals 44-46 are clients -- i.e. originating and destination terminals (Potter par. 64, lines 4-5). They cannot correspond to Applicants' data processing devices 22a-22b, which are alternately selectable to process a teleconference based on traffic loading as claimed. A system cannot automatically select an alternate party for a teleconference -- at least not if it matters who participates.

Examiner also mentions Potter's business application 52 as corresponding to Applicants' "plurality of telephone and video conference data processing devices". However Potter's business application 52 is not in his gateway 36, and furthermore, his gateway is remote on a network 22 past his gatekeeper 40. Disadvantages of this topography are described later below.

Examiner notes on p. 11 that Potter does not teach a resource control device that could alternately select from a plurality of such business applications 52 based on traffic loading. Furthermore, if these business applications 52 are software modules, duplication of them would not relieve traffic loading anyway. Executing an additional instance of a software module in a computer increases, rather than decreases, the load on the processor. Thus, providing a plurality of business applications 52 in Potter for alternate selection based on traffic loading would require multiple computers 54. However, multiplying Potter's computer 54 would be inoperable, since Potter gives no way to coordinate such plural computers with a resource manager. Even if both a resource manager and multiple computers were added, it would not produce the invention as claimed; and furthermore, such multiple computers would operate slower than in Applicants' integrated system due to network propagation and routing delays.

On page 3, paragraph 2 of the office action, Examiner asserts that an integrated aspect of the invention is not found in the claims. However, in claim 41 all devices and modules are recited as elements of a computer. In claim 39, all devices and modules are recited as "in the PBX". In both cases, an integrated system of these devices is claimed, as opposed to a distributed system of such devices distributed around a network as in Potter. Support for integration of gateways and a gatekeeper in a PBX computer is found in FIG 2 and paragraph 53 of the present specification, among others. Applicants' telephone and/or video conference data processing devices are shown, described, and claimed as being in the gateway modules.

Applicants' [0053]: "As shown in FIG. 2, the PBX computers (here: the PBX computer 15 a , and correspondingly also the—constructed and set up in the same way as PBX computer 15 a —PBX computers 5 , 15 b) feature for this purpose at least one module 20 a which takes over the function of the gateway (or a number, e.g. between two and seven, gateway modules 20 b , which are constructed and set up in a similar way to gateway module 20 a), as well as a (especially precisely one) module 21 which takes over a gatekeeper function."

In contrast Potter's FIG 2 shows a gateway 36, gatekeeper 40, computer 54, and switch 42 each located at a separate drop on a LAN or WAN 22. This is intentional. For example, in paragraph 29: "In this arrangement, the Gateway 36 and the Gatekeeper 40 effectively act together as a virtual PBX (Private Branch Exchange)." In paragraph 32: "An alternative embodiment, and a further development, is shown in FIG. 3. Here, the Gateway 36 now resides within the external network 12 rather than remaining an overhead on the premises of the individual organisation." Advantages of Applicants' integration include economy, maintainability, upgradeability, security, and management control.

Potter teaches away from integration, for example in paragraph 32 noted above, and for example in the abstract: "Communications between the Gateway (36) and the Gatekeeper (40) preferably take place across the network and comply with the ITU H.323 standard protocol. Communications between the Gatekeeper (40) and the Call Manager preferably take place across the network". Potter's use of the term "integrated" refers to integrating video, audio, data, Internet, and telephony in one system, and not to integration of teleconferencing devices per the topography of Applicants' claimed invention.

A combination of Potter with Detampel would not produce the invention as claimed. Detampel also teaches a distributed system, having little correspondence to Applicants' claimed integrated topography. See FIG 1 of Detampel, in which a conference allocation and control system (CACS) and a plurality of selectable bridge servers 101a-n are each located on a separate drop on a LAN/WAN.

Request for Withdrawal of finality

Examiner's mistakes as described above affected both the restriction requirement and the rejections. Examiner did not examine group I, but instead examined only claim 41 by mistake as argued above. Therefore, Applicants request withdrawal of finality of the office action of 06-09-2008.

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Conclusion

For obviousness to occur under 35 USC 103, a combination must be suggested by the references or motivated by obvious or expected benefits in view of documented knowledge in the field at the time of the invention, not by hindsight guided by the Applicants' invention. It should not be contrary to the teachings of the references, it must work, and it must produce the Applicants' invention. These criteria are not met as argued above. The dependent claims should be allowable as depending from a respective allowable claim. Therefore the Applicant feels this application is in condition for allowance, which is respectfully requested.

The commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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